IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Tr.P(C).No. 152 of 2007()

OP.255/2007 of FAMILY COURT,THRISSUR

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PETITIONER

SANGEETHA, D/O. LATE APPUNNI,
AGED 27 YEARS, KAVITHA NIVAS, THACHINGANADOM,
PATTIKKADU, MALAPPURAM DISTRICT.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENTS:

SURESH KUMAR, S/O. KUNHIKUTTAN,
AGED 35 YEARS, PARVATHI NILAYAM,
THATHANAMPULLI P.O., PALAKKAD DISTRICT.

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

Tr.P.C.No. 152 OF 2007

Dated this the 16th July, 2007.

JUDGMENT

This transfer petition is filed to effect a transfer of O.P.255/07 pending before the Family Court, Thrissur to the Family Court, Malappuram. The wife is the transfer petitioner. I had perused the entire file. The husband has filed a petition for divorce on 22.2.2007 before the Family Court, Thrissur and the wife on one day viz., 30.5.07 has filed three cases against the husband at Family Court, Malappuram. The husband has prayed for divorce and the wife has filed a petition for maintenance, then also for return of the money given at the time of the marriage with ornaments and also the child has filed a petition for past maintenance. The grounds alleged are (i) the Family Court at Thrissur does not have any territorial jurisdiction and a vague averment is there that she is not able to travel a long distance to attend the Family Court, Thrissur due to her employment and due to the reason that she has to look after the minor daughter as well. As per the latest decision of the Apex Court reported in **Anindita Das v. Srijit Das** {(2006) 9 SCC 197} the Supreme Court has held that transfer of each case has to be considered on the merits, facts and circumstances of each case. Learned

Counsel for the transfer petitioner has cited before me the decision of the Apex Court reported in **Anita Laxmi Narayan Singh v. Laxmi Narain Singh** {(1992) 2 SCC 562}. It was a case where the proper course was to transfer the case from Ghaziabad to Bombay and the court, on appreciation of the entire materials came to the conclusion that it deserves to be transferred considering the difficulties faced by the wife. In the case before me the wife is an employee and even from her statement of facts it is seen that they had their matrimonial home at Palakkad, later at Perinthalmanna and they were living around. It is seen from the averments that the husband is alleged to be employed in a tutorial college in Thrissur. If the question that they have not resided together lastly at Thrissur and the Thrissur court has no jurisdiction, it is a matter that has to be agitated before the Family Court, Thrissur. So, it is not a matter that has to be considered in a transfer petition. The only other ground I find is ground No:8 in the transfer petition which states that petitioner is not in a position to travel long distance to attend the Family Court, Thrissur due to her employment and also due to the reason that she has to look after the minor child as well. The distance between Thrissur and Malappuram is not much so as to make the travel difficult and if all the applications

before the Family Court are entertained in this fashion then the very object of Section 19 of the Hindu Marriage Act will become absolutely redundant. Therefore, I do not find that this is a case where the court has to exercise jurisdiction to transfer the case. The facts itself speak that that the wife has rushed to the Malappurm Family court by filing three cases after the husband has filed the petition for divorce in February 2007. So, taking into consideration all the facts and circumstances I am convinced that there are no sufficient grounds to transfer the case and therefore the transfer petition is dismissed. It is made clear that the question of jurisdiction is a matter which has to be decided independently and it has nothing to do with the dismissal of this transfer petition.

M.N.KRISHNAN
Judge

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